

June 19, 2002

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**REVISED CONSOLIDATED REPORT WITH CORRECTED APPEAL DEADLINE
PROPOSED PLAT OF PORTICO ON FINN HILL
SEPA THRESHOLD DETERMINATION APPEAL**

SUBJECT: Department of Development and Environmental Services File No. **L01P0023**
Proposed Ordinance No. **2002-0089**

THE PORTICO ON FINN HILL
Preliminary Plat Application

Location: Southeast corner of the intersection of Northeast 124th Street and
86th Avenue Northeast – 12226 – 86th Avenue Northeast, Kirkland

Applicant: Chaffey Homes, *represented by*
Glenn J. Amster
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Seattle, WA 98101-6241
Facsimile: (206) 223-7107

Appellants: **Susanne Schuegraf and Martin Pagel**
8515 NE 124th Street
Kirkland, WA 98034

King County: Department of Development and Environmental Services,
Land Use Services Division, Current Planning Section,
represented by **Kim Claussen**
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions
Examiner's Decision:	SEPA: Denied Proposed Plat: Approve, subject to conditions
Complete Application:	September 10, 2001

EXAMINER PROCEEDINGS:

Hearing Opened: May 14, 2002
Hearing Closed: May 14, 2002

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Entering sight distance
- King County Road Standards
- Walkways
- Safe student walking conditions
- Street trees

SUMMARY:

- Grants preliminary approval to a twenty lot subdivision of 2.85 acres.
- Denies SEPA appeal regarding subject subdivision proposal.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **Proposal.** Chaffey Homes (“Applicant”) proposes to subdivide a 2.85 parcel into 20 single-family residential building lots, comprising a proposed density of 7 dwelling units per acre with lot sizes ranging from approximately 3,300 square feet to 5,800 square feet. Copies of the preliminary plat drawing are included in this hearing record as exhibit no. 7 and as an attachment to exhibit no. 1. The proposed density falls within the density range required by the R-8 zoning classification.
2. **State environmental policy act.** On February 15, 2002, the Department of Development and Environmental Services (“DDES” or “Department”) issued a threshold determination of non-significance regarding the proposed development. That is, the Department published its determination that the proposed development did not cause probable significant adverse impacts on the environment and that, therefore, an environmental impact statement would not be required.

On March 4, 2002, Susanne Schuegraf and Martin Pagel appealed the threshold determination of non-significance, raising concerns regarding the location of the offsite walkway along Northeast 124th Street as well as impacts associated with construction of the walkway. Specifically, the Appellants opposed locating an offsite walkway along the *south* side of Northeast 124th Street, preferring instead the north side of the street. Moreover, the Appellants oppose the removal of some trees associated with the south side walkway location proposed. These issues are discussed below.

No other agency, person, tribe or other legal entity appealed the SEPA threshold determination.

3. **Department recommendation.** The Department recommends granting approval to the proposed plat of Portico on Finn Hill, subject to sixteen conditions of final plat approval stated on pages 7 through 9 of the Department’s preliminary report dated May 14, 2002 (exhibit no. 2); *except* for these changes:

- a. **Site distance.** Recommended condition no. 8 C requires urban subcollector standard frontage improvement along 86th Avenue Northeast. In its final recommendation, the Department adds the following language:

As necessary, the existing trees within the right-of-way shall be removed on Northeast 124th Street west of 86th Avenue Northeast to achieve standard entering site distance.

- b. Recommended condition no. 13 addresses “suitable recreation space” requirements. It also prohibits counting a joint use driveway and drainage facility maintenance road in suitable recreation space calculations. Further reconsidering that matter, the Department adds the following language in its final recommendation:

The maintenance road may be included in the recreation space calculations if grass crete or similar surface is used, subject to DDES review and approval.

Both of these additions to the Department’s recommendation are contained in exhibit no. 18.

4. **Applicant response.** The Applicant accepts the Department’s final recommendation as described in finding no. 4, preceding.
5. **Walkway location.** RCW 58.17.110 requires a finding that safe walking conditions will exist for student residents of a proposed subdivision enroute to school. Pursuant to that authority, the Department recommends requiring the Applicant to provide a walkway along the south side of Northeast 124th Street from 86th Avenue Northeast to 84th Avenue Northeast. Recommended condition no. 8 D. No shoulders currently exist on the south side of Northeast 124th Street west from the subject property. The proposed walkway would connect with a generally sufficient system of sidewalks and separated paved shoulders extending northward along 84th Avenue Northeast. The Lake Washington School District has indicated to the Department that the future students of Portico on Finn Hill will walk to Carl Sandburg Elementary and Finn Hill Junior High Schools along 84th Avenue Northeast.

The Appellants would prefer the five foot wide asphalt walkway to be provided on the north side of Northeast 124th Street. They argue that it would require removal of 15 to 20 trees that are 40 to 50 years old, “including about ten apple trees that are 50 to 100 years old.” The hearing record suggests that most of the tree removal will occur in order to achieve safe entering sight distance for drivers entering Northeast 124th Street from 86th Avenue Northeast, a measure unrelated to walkway location. They also express concern that fencing will necessarily be dismantled. Finally, Appellants express concern that habitat loss will result, although the hearing record contains scant, if any scientific documentation of this claim.

As an alternative, the Appellants recommend that the walkway development occur along the north side of Northeast 124th Street. They note that a combination of existing sidewalk and graveled walkway runs approximately 2/3 of the way from 84th Avenue Northeast past 86th Avenue Northeast. In addition, they testify that the crossing guard that stops traffic for children crossing 84th Avenue Northeast uses the cross walk on the north side of Northeast 124th Street.

The Department counters that *regardless of whether the walkway is installed along the south side of Northeast 124th Street* several trees must be removed in order to obtain entering site distance at the Northeast 124th Street/86th Avenue Northeast intersection consistent with King County Road Standards (KCRS, 1993). Thus, the Appellant's proposal arguably multiplies the roadside impact of the proposed development by creating impacts on *both* the north and south sides of Northeast 124th Street.

Regarding SEPA, the Department argues that the "impacts associated with the offsite walkway issues do not approach the magnitude required for a determination of significance," and further that the remarks regarding the walkway requirement stated on the Threshold Determination constituted only an "advisory note" not a SEPA requirement. The Department contends further that the various County regulations apply to this proposed development "adequately addressed."

6. **Entering site distance.** KCRS section 2.02 establishes entering site distance standards. As an urban neighborhood collector street, Northeast 124th Street requires an entering site distance of 365 feet at a design speed of 25 miles per hour; 430 feet at a design speed of 30 miles per hour; and, 490 feet at a design speed of 35 miles per hour. The method for calculating entering site distance is established by KCRS section 2.13. As a consequence of meeting the entering site distance, 13 evergreen trees will be removed, two limbed and one apple tree removed. In order to accommodate the walkway discussed in finding no. 6 preceding, an additional four apple trees may be removed.

Neighboring property owners who testified at the hearing expressed concern that the tree removal will reduce the rural character of the neighborhood. The King County Comprehensive Plan designates the area as "urban."

7. **Department report adopted.** Although there is testimony which questions the completeness of the Departmental report and which questions the conclusions reached by the Department, the factual assertions contained in the Department are uncontested. On that basis, then, the Department's report (exhibit no. 2) is adopted and incorporated by this reference. Copies of the Department's preliminary report will be attached to those copies of this report that are filed with the Metropolitan King County Council.

CONCLUSIONS:

1. We do not agree with the Department's assertion that because the walkway matter is merely a "note" or "advisory note" on the SEPA threshold determination that somehow it is not properly subject to SEPA appeal. The note is there because the threshold determination is based upon (predicated upon) certain things happening. One of those things, in this case, is the construction of a walkway in a certain location.

WAC 197-11 governs the administration of SEPA threshold determinations. WAC 197-11-350(1), -330(1)(c) and -660(1)(3) each authorize the lead agency when making threshold determinations to consider mitigating measures that the agency or Applicant will implement (or mitigating measures that other agencies will require or enforce) when making a threshold determination. Obviously, if the Department concluded that those various measures were inadequate, the Department would impose an appropriate policy-based mitigating condition. In this case, the Department acknowledged in its threshold determination "note" that a walkway would be required. In other words, using its authority pursuant to WAC 197-11-350(1), -330(1)(c) and 660(1)(3) the Department assumed the walkway would be constructed. The "note" announces that assumption.

Making an assumption that supports entering a DNS (a “note”) does not insulate the issue from appeal as suggested by the Department in section N at page 6 of its preliminary report (exhibit no. 2). Regardless of whether the Department had called out the walkway requirement as a threshold determination “note” or not, the issue is appealable.

2. The Department correctly concludes that the walkway issue and the tree removal issue “do not approach the magnitude required for a determination of significance.” This is not a shopping center or a new interstate intersection. It is not a rezone of agricultural land. Rather, it is a removal of a few trees, some 50 years old, to achieve safe entering site distance. There is no evidence or argument in the hearing record which would lead any reasonable decision-maker to the conclusion that the removal of a few trees or the construction of a walkway is so significant as to require preparation of an environmental impact statement.
3. The Appellant’s presentation leaves us uncertain as to whether the Appellants really seek an EIS. Rather, they appear simply to want the walkway location moved. The Appellants bring to our attention a number of benefits that would accrue from moving the proposed location of the walkway. Further, they have asked that the walkway issue be considered independently from the entering site distance issue. That is, regardless of the final determination on entering site distance tree removal requirements, they ask that the proposed walkway be relocated.
4. As observed in the findings earlier, however, relocating the walkway while at the same time removing trees to obtain entering site distance certainly accomplishes nothing with respect to rural character preservation or tree preservation. Further, we note that recommended condition no. 15 requires the Applicant to plant street trees at the rate of one tree for every 40 feet of frontage along all on-site roads. Recommended condition no. 16 also requires a detailed tree retention plan to be filed with engineering plans. Clearing of the subject property is prohibited until the final tree retention plan is approved by the Department. We note also that King County has no policies which encourage or require the preservation of rural character in an area designated as “urban” by the Comprehensive Plan.
5. RCW 43.21C.075(3)(d) and KCC 20.44.120 each require that the decision of the responsible official shall be entitled to “substantial weight.” Having reviewed this “substantial weight” rule, the Washington Supreme Court in Norway Hill Preservation Association v. King County, 87 Wn 2d 267 (1976), determined that the standard of review of any agency “negative threshold determination” is whether the action is “clearly erroneous.” Consequently, the administrative decision should be modified or reversed if it is:

. . . clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order.

The Appellant differs with the Department’s assessment of impacts regarding the walkway location and entering site distance tree removal. Although the Appellant argues that the information on which the Department based its determination was insufficient there is no adequate demonstration that the information on which the Division based its determination is actually erroneous. There is substantial amount of information in the record regarding the various impacts which have been asserted by the Appellant. The Department has not been unaware of these issues and has investigated them, but has arrived at conclusions which differ from the Appellant’s. The Department having had access to the variety of issues and points of view and information expressed by the Appellant and others maintains its original determination of non-significance. *The Department’s judgment in this case must be given substantial weight.*

In view of the entire record as submitted and in view of the State Environmental Policy Act, the Department's decision is not "clearly erroneous" and is supported by the evidence.

6. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
7. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
8. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
9. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonable and necessary as a direct result of the development of this proposed plat.

DECISION: SEPA.

For the reasons indicated above, the SEPA threshold determination appeal of Susanne Schuegraf and Martin Pagel is DENIED.

DECISION: PROPOSED PLAT.

The proposed plat of Portico on Finn Hill, as described by the preliminary plat drawing contained in this hearing record as exhibit no. 7 is GRANTED PRELIMINARY APPROVAL; *subject* to the sixteen conditions of final plat approval stated in the Department's preliminary report (exhibit no. 2) with the following amendments:

- 8c. FRONTAGE: The frontage along 86th Avenue Northeast from Road A to Northeast 124th Street shall be improved to the urban subcollector standard (east side). *As necessary, the existing trees within the right-of-way shall be removed on Northeast 124th Street west of 86th Avenue Northeast to achieve standard entering sight distance.*

The frontage along 86th Avenue Northeast from Road A to the south boundary shall be improved to the urban one-half street standard.

The frontage improvements along 86th Avenue Northeast may require full width overlay and relocation of the existing road crown per Section 4.01F of the KCRS.

13. Suitable recreation space shall be provide consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic tables[s], benches, etc.). Tract D/joint use driveway and maintenance road(s) for the drainage facility, if needed shall not be counted toward the recreation space requirement. *The maintenance road may be included in the recreation space calculations if grasscrete or similar surface is utilized, subject to DDES review and approval.*

- a. A detailed recreation space plan (i.e., landscape specs, equipment specs, area calculations, dimensions, etc.) shall be submitted to review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
- b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.

ORDERED this 19th day of June, 2002.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 19th day of June, 2002, to the parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before July 3, 2002***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before July 10, 2002***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Court-house, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE MAY 14, 2002 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT
AND ENVIRONMENTAL SERVICES FILE NO. L01P0023.

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Bruce Whittaker and Kristen Langley representing the Department; and Glenn J. Amster representing the Applicant. The other participants in this hearing were Susanne Schuegraf, Mary Ord, Kari Schoessler, Max Pagel, and Jon Nelson.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES File No. L01P0023
- Exhibit No. 2 DDES Preliminary Report dated May 14, 2002
- Exhibit No. 3 Application dated September 10, 2001
- Exhibit No. 4 Environmental Checklist dated September 10, 2001
- Exhibit No. 5 Declaration of Non-significance dated February 15, 2002
- Exhibit No. 6 Affidavit of Posting, October 12, 2001 date of posting & October 15, 2001
As date affidavit was received by DDES
- Exhibit No. 7 Plat Map dated September 10, 2001
- Exhibit No. 8 Land Use Map – 421E & 422W
- Exhibit No. 9 Assessors Map – NW & SW 30-26-5
- Exhibit No. 10 Appeal Letter from Shuegraf & Pagel w/attached letters received March 4, 2002
- Exhibit No. 11 Safety/Accident Analysis by David Hamlin & Associates dated November 7, 2001
- Exhibit No. 12 Conceptual Recreation Plan received January 15, 2002
- Exhibit No. 13 Arboricultural Analysis by Brian K. Giles dated December 5, 2001
- Exhibit No. 14 Preliminary Drainage & Tree Retention Plan received January 15, 2002
- Exhibit No. 15 Off-site Walkway & Road Sections received January 15, 2002
- Exhibit No. 16 Level 1 Drainage Analysis by Peterson Consulting received September 10, 2001
- Exhibit No. 17 Addendum Level 1 received January 15, 2002
- Exhibit No. 18 Revised Recommendations – 8c & 13
- Exhibit No. 19 86th & 124th Photos taken by S. Schuegraf
- Exhibit No. 20 Eight photos depicting walking conditions taken by S. Schuegraf
- Exhibit No. 21 Twelve photos of 124th looking East taken by S. Schuegraf
- Exhibit No. 22 List of Signatures from S. Schuegraf
- Exhibit No. 23 Off-site Walkway and Road from J. Nelson
- Exhibit No. 24 Reproduction Photos from Exhibit 23 from J. Nelson
- Exhibit No. 25 Reproduction of view AA & BB from Exhibit 23 – J. Nelson
- Exhibit No. 26 Letter from J. Nelson to K. Claussen dated January 14, 2002
- Exhibit No. 27 DDES Field Map

RST:mls

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